

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Julie Burnett, Michael Burnett, and B.B.,

Plaintiffs,

v.

Case No. 16-CV-1137 (JNE/KMM)
ORDER

GlaxoSmithKline LLC, McKesson
Corporation, and Target Corporation,

Defendants.

This matter is before the Court on a Report and Recommendation issued by the Honorable Katherine Menendez, United States Magistrate Judge, on August 10, 2016. No objection to the Report and Recommendation has been made. Nevertheless, the Court has conducted a de novo review of the record. *See* D. Minn. LR 72.2(b). Based on that review, the Court accepts the Report and Recommendation [Docket No. 46].

The Court also wishes to highlight the following facts regarding the procedural history of this case: Plaintiffs originally brought this action in Minnesota state court against Defendants GlaxoSmithKline, LLC and McKesson Corporation on February 29, 2016. Defendants removed the case to the District of Minnesota. After removal, Plaintiffs sought voluntary dismissal under Rule 41(a)(1). United States District Court Judge Michael J. Davis dismissed the suit without prejudice, in its entirety, on April 22, 2016.

During the pendency of that first suit, Plaintiffs served on the above-captioned three Defendants—this time including Target Corporation—an amended complaint. Service of process led to the creation of a second, concurrent suit in Minnesota state court. Despite the dismissal of the first suit and as a result of confusion between the parties, the Defendants removed this second suit to the District of Minnesota on April 29, 2016. Several days later, Plaintiffs filed a motion to

voluntarily dismiss under Rule 41(a)(2). Plaintiffs sought to dismiss on the basis that they needed additional time to prepare their case. On May 12, 2016, the Judicial Panel on Multidistrict Litigation (JPML) issued a conditional transfer order of the case to a related multi-district case, which Plaintiffs opposed.

The Court stayed the case until June 6, 2016, giving Plaintiffs time to seek counsel through the Minnesota Chapter of the Federal Bar Association's Pro Se Project. Plaintiff Julie Burnett then filed for dismissal—again—under Rule 41(a)(2), before the stay lifted. On June 7, 2016, Plaintiffs executed a Stipulation for Voluntary Dismissal by Court Order, seeking dismissal. The next day, they withdrew the Stipulation. On July 5, 2016, Plaintiffs appealed their own Stipulation to the Eighth Circuit, and the case was transmitted on July 25, 2016.

In the meantime, on August 5, 2016, the JPML vacated its own conditional transfer order on Plaintiff Julie Burnett's assurances that the case would be dismissed. The Eighth Circuit then dismissed the appeal on August 8, 2016. Thus, the motion to dismiss is now before the Court. While the Court questions the expediency of dismissal, the motion is unopposed.

Therefore, IT IS ORDERED THAT:

1. Plaintiff's motion for dismissal without prejudice under Federal Rule of Civil Procedure 41(a)(2) [Docket No. 5] is GRANTED. Plaintiff Julie Burnett's second motion for dismissal without prejudice under Rule 41(a)(2) [Docket No. 31] is DENIED as moot.
2. Defendants Target Corporation and McKesson Corporation's joint motion for an extension of time to answer or otherwise respond to Plaintiffs' amended complaint and to stay all proceedings pending transfer to an MLD proceeding [Docket No. 7] is DENIED as moot.
3. This matter is DISMISSED WITHOUT PREJUDICE pursuant to Rule 41(a)(2).

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: September 9, 2016

s/Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge